(2)

Supreme Court, U.S.
FILED
MAY 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1719

In the
Supreme Court of the United States
October Term, 1986

IN RE: UNION CARBIDE CORPORATION GAS PLANT DISASTER AT BHOPAL, INDIA IN DECEMBER, 1984

THE UNION OF INDIA,
Respondent and Cross-Petitioner,

vs.

UNION CARBIDE CORPORATION,
Respondent.

THE UNION OF INDIA'S BRIEF IN OPPOSITION TO INDIVIDUAL PLAINTIFFS' ATTORNEYS' PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ROBINS, ZELLE, LARSON & KAPLAN
Michael V. Ciresi*
Bruce A. Finzen
Robert M. Wattson
Roberta B. Walburn

1800 International Centre
900 Second Avenue South
Minneapolis, Minnesota 55402
(612) 349-8500
Attorneys for the Union of India, Respondent and Cross-Petitioner

*Counsel of Record

Of Counsel:
D.S. Sastri

LIST OF PARTIES

In the wake of the Bhopal disaster, some 145 actions were filed in federal courts in the United States. All of these cases were consolidated and assigned to the Southern District of New York by order of the Judicial Panel on Multidistrict Litigation.

The Union of India, respondent and cross-petitioner, filed a complaint against Union Carbide Corporation, respondent, on April 8, 1985 on behalf of all victims of the Bhopal disaster. The Union of India derived its standing on the bases of the Bhopal Gas Leak Disaster (Processing of Claims) Act, an act of Parliament which granted the Union of India the exclusive right to represent all claimants, as well as the common law doctrine of *parens patriae* and retainers executed by virtually all victims of the disaster. On June 28, 1985 the individual plaintiffs' attorneys, petitioners, filed a consolidated complaint, which included a class action allegation. The competing claims to representation by the Union of India and the individual plaintiffs' attorneys were never presented for resolution to the courts below.

TABLE OF CONTENTS

Page

LIST OF PARTIES i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 3

CONCLUSION 4

TABLE OF AUTHORITIES

Page

Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947) 3

Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981), *reh. denied*, 455 U.S. 928 (1982) 3

Weinberger v. Kendrick, 698 F.2d 61 (2d Cir. 1982), *cert. denied*, 464 U.S. 818 (1983) 3

No. 86-1719

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

IN RE: UNION CARBIDE CORPORATION GAS PLANT DISASTER AT BHOPAL, INDIA IN DECEMBER, 1984

THE UNION OF INDIA,
Respondent and Cross-Petitioner,

vs.

UNION CARBIDE CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT UNION OF INDIA'S BRIEF IN OPPOSITION TO INDIVIDUAL PLAINTIFFS' ATTORNEYS' PETITION FOR A WRIT OF CERTIORARI

The Union of India, respondent and cross-petitioner, respectfully submits this brief in opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit filed by the individual plaintiffs' attorneys.

STATEMENT OF THE CASE

For purposes of this brief, the Statement of the Case will be limited to correcting two material inaccuracies in petitioners' Petition for a Writ of Certiorari.

First, petitioners state that the Court of Appeals affirmed the District Court's order but deleted, *inter alia*, the condition that Union Carbide Corporation ("UCC") be subject to discovery in India under the Federal Rules of Civil Procedure. See Petition for a Writ of Certiorari, at p. 5. In fact, the Court of Appeals modified the discovery condition, extending the condition to the plaintiff by allowing reciprocal discovery pursuant to the Federal Rules for both parties in India. 809 F.2d at 205-06; Appendix at p. 23a.[1] The Court of Appeal's modification of the discovery condition is one of the subjects of the Union of India's Cross-Petition for a Writ of Certiorari, filed on the same date as this Brief in Opposition.

Secondly, petitioners assert that they reached a tentative settlement with UCC for $350,000,000 and thereafter moved the District Court for an order scheduling a fairness hearing. Petition for a Writ of Certiorari, at pp. 3-4. The District Court's denial of this motion for a fairness hearing, which was affirmed by the Court of Appeals, is one of the issues presented by the individual plaintiffs' attorneys to this Court.

However, the individual plaintiffs' attorneys never did reach a $350,000,000 settlement with UCC. As the Court of Appeals stated:

> Although the plaintiffs' American counsel may at one time have been close to reaching a $350 million settlement of the cases, no such settlement was ever finalized. No draft joint stipulation in writing or settlement agreement appears to have been prepared, much less approved by the parties. No petition for certification of a settlement class under Fed. R. Civ. P. 23 has ever been presented.

809 F.2d at 203; Appendix at p. 17a.

---

[1] All appendix citations are to the appendix to the Petition for a Writ of Certiorari filed by the individual plaintiffs' attorneys.

REASONS FOR DENYING THE WRIT

This Petition for a Writ should be denied because the individual plaintiffs' attorneys have demonstrated no special and important reasons for consideration by this Court. Indeed, the individual plaintiffs' attorneys do not present any issues of law. Instead, petitioners merely ask this Court to substitute its judgment for that of the District Court on an issue which rests in the sound discretion of the District Court.

In dismissing these consolidated cases, the District Court simply exercised its discretion under the doctrine of *forum non conveniens* as articulated by this Court in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), *reh denied*, 455 U.S. 928 (1982), and *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). The Court of Appeals, finding no abuse of discretion, affirmed the District Court.

Even petitioners concede, quoting from the District Court, that the District Court approached the analysis of the forum factors "in the same direct manner in which *Piper* and *Gilbert* set them out." Petition for a Writ of Certiorari, at p. 15. Petitioners further concede that the "basic rules" of forum analysis "are easily extracted from *Gulf Oil Corporation v. Gilbert.*" Petition for a Writ of Certiorari, at p. 9. There is no dispute that *Piper* and *Gilbert* are the proper controlling authorities, and that these cases set forth a flexible, case-by-case analysis for forum decisions. All that is disputed by petitioners is the application of this well-settled, discretionary analysis by the court below.

The issue regarding the denial of a fairness hearing on the alleged "settlement" presents yet another well-settled legal issue concerning the exercise of discretionary judgment by the courts below. *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), *cert. denied*, 464 U.S. 818 (1983). Moreover, on the facts of this case, with neither a settlement agreement nor a motion for certification of a settlement class ever presented to the District Court, the issue of the proper exercise of that discretionary judgment never arose. In presenting this issue to this Court, the individual plaintiffs' attorneys demonstrate a total lack of understanding of the class settlement procedure.

CONCLUSION

For the above reasons, the Union of India, respondent and cross-petitioner, requests that this Petition for a Writ of Certiorari be denied.

Respectfully submitted,

ROBINS, ZELLE, LARSON & KAPLAN
Michael V. Ciresi
Bruce A. Finzen
Robert M. Wattson
Roberta B. Walburn

1800 International Centre
900 Second Avenue South
Minneapolis, Minnesota 55402
(612) 349-8500

Of Counsel:
D.S. Sastri

Attorneys for the Union of India, Respondent and Cross-Petitioner